IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 12595 of 1997

Between:

G.Vankateshwarlu S/o.Sri Venkatadri
R/o.Beside Shivalayam Cheruvu Katta, Narasaraopet
Guntur District, Andhra Pradesh.

..... PETITIONER

AND

1 The Depot Manager APSRTC
Narasaraopet Guntur District.
2 The Labour Court
Guntur District, Andhra Pradesh.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or Order or Direction under Article 226 of the Constitution of India, particularly one in the nature of Writ of Certiorari setting aside the award of the Labour Court, Guntur, passed in I.D.No.285/1993 on 28-8-1996 to the extent of not giving the back wages and deferment of Annual Increments with cumulative effect after calling for the records and to pass such other orders that this Hon'ble Court may deem just to pass.

Counsel for the Petitioner:MR.PRATTIPATI VENKATESWARLU

Counsel for the Respondent No.1: Sri R.M. Reddy

Counsel for the Respondent No.2: G.P. for Labour.

The Court made the following :

ORAL ORDER:

Heard both sides.

The petitioner, who was initially appointed as driver, and subsequently having regard to his defective vision, reverted as cleaner, filed this writ petition, inter alia, seeking to assail the award in I.D.No.285 of 1993 dated 28.8.1996 on the file of the 2nd respondent herein, whereunder the petitioner was reinstated with continuity of service but without back wages and further imposing the punishment of deferment of two annual increments with cumulative effect.

The facts in brief are that during the course of his service, he was found to be absent unauthorisedly from 7.1.1989 to 25.1.1989. On issuance of show cause notice, the petitioner had given explanation to the effect that when he returned from Shabarimalai, he fell sick and in spite of the telegram being sent for extension of leave, the same was not acceded to and the sickness turned out to be Typhoid fever and, therefore, his absence is purely accidental and unintentional. The same was not accepted and ultimately the petitioner was removed from service, whereupon he raised the dispute which is taken up by 2nd respondent as I.D.No.285 of 1993.

After contest, the 2nd respondent passed the impugned award reinstating the petitioner into service with continuity of service, but without back wages. That apart, a further punishment of deferment of two annual increments with cumulative effect was also imposed.

Learned counsel for the petitioner submits that having already given punishment of withholding back wages, the second aspect of deferment of two annual increments with cumulative effect amounts to double punishment and further such deferment is a major punishment, which could not have been awarded.

Learned Standing Counsel appearing for the respondents contested the petitioner's claim and submitted that on the facts and circumstances of the case, the punishment imposed is perfectly justified and does not call for any interference.

Having heard the learned counsel on either side and perusing the order impugned, the only question that calls for consideration is whether the deferment of two annual increments with cumulative effect, as awarded by the 2nd respondent under the facts and circumstances of the case, would be arbitrary and also amounts to double punishment.

There is no dispute that since the petitioner, who was an employee of the Corporation, continued to be absent unauthorisedly, proceedings were initiated against him and ultimately he was removed from service, rejecting his explanation. It is the case of the petitioner that he went to Shabarimalai and while returning he fell sick and when he applied for extension of his leave on medical grounds, the same was not acceded. Therefore, his absence is purely

accidental and unintentional and further the period of absence was also not longer one.

The 2nd respondent, after upholding that the petitioner is entitled for reinstatement with continuity of service but without back wages, had, however, ordered the aforesaid further punishment of deferment of two annual increments with cumulative effect. There cannot be any dispute regarding the fact that deferment of any increments is a substantial major punishment, which could not have been taken recourse to. In the absence of any warranting circumstances, except the fact that the petitioner was found absent unauthorisedly for few days, there is no other serious allegation against him. In view of the same, basically the question of imposing such punishment, more so, when the petitioner was reinstated with continuity of service, could not have been ordered. Further, having withheld back wages as a suitable punishment for such unauthorized absence, any further punishment of deferment of two annual increments with cumulative effect would certainly amount to a double punishment. In the circumstances, it is to be held that the 2nd respondent was not right in awarding such punishment.

The writ petition is partly allowed. The impugned award to the extent of imposing punishment of deferment of two annual increments with cumulative effect is set aside. No order as to costs.

27.12.2004

CVM

To,

1 The Depot Manager APSRTC
Narasaraopet Guntur District.
2 The Labour Court
Guntur District, Andhra Pradesh.

3. 2 CCs to G.P. for Labour, High Court buildings, Hyderabad (OUT).

4. 2 CD copies.